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November 9, 1997, Sunday

The story underlying the Special Forces murder trial and what led to its ending, I now see (November 8) have to be laid out in an earlier passage, as a very big continuing story going on in late September while I'm undertaking these various initiatives. It exemplifies the central ambiguities of the war: what is justified killing in wartime, what is murder even in wartime; who is authorized to make the decisions; what secrecy and lying is justified in war, what is not.

I'll insert some of these issues below in today's version, but they will eventually be presented earlier in the story of September, 1969. Then the passage about September 30 will simply present the denouement of the story and my immediate reaction to it (instead of presenting it, as in my first draft of Nov. 6, as if the story was new to me on September 30, and also new to the reader so that the anecdote has to be burdened with an account of the whole episode leading up to it.)

I had, after all, been reading accounts of this for weeks; it was a cover story on every magazine. Indeed, my own reaction to the story on Sept. 30 must have reflected the fact that I had been following this story for months, like everyone else (though I don't usually think about this). That's perhaps why I fixed on one particular aspect of the Sept. 30 story--the "chain of lies" paralleling the chain of command, mentioned matter-of-factly by the reporters--so strongly; other aspects of it were old news, foreseeable or known.

This was the big story in the month running up to the Moratorium, just as if My Lai had been unfolding, or the invasion of Cambodia. The incident deserves this much attention because I am telling here, after all, the incident that actually triggered my decision to copy the Pentagon Papers, along with the other approaches I was pursuing. Most of these other tactics seemed more direct and potentially effective than the Papers themselves, though the Papers could lend some credibility to my various forms of testimony about Nixon's current policy.

My decision on September 30 was to release the Papers too: partly to have this effect of strengthening these other approaches; partly for its own sake (as in this account: i.e. my decision to stop lying about past murders in a way that ensured further murders (see Merrell Williams, footnote 3, revealer of the "Cigaret Papers"), to opt out of that conspiracy) without much concern for whether or not this would be "effective"; partly just to commit myself to an "all-out" campaign in which nothing was to be held back, effective or not, dangerous (to me) or not.

Then there is, as often, the interesting matter of the view from the White House of these same events: the secret context, unknown to me at the time, that made the case so dangerous for Nixon because a public trial threatened to expose these matters (known to some of the defendants, or findable on discovery) to the public. The ongoing secret bombing of Cambodia; plans and past preparations for assassinating or overthrowing Sihanouk, invading Cambodia; the Duck Hook escalations being planned that month; the My Lai case, secretly coming up at the same time inside the Army.

There was much more at stake for Nixon in preventing this trial--an unprecedented intervention by the high command--than indicated even in Haldeman's diary, which mentioned: the unpopularity of the prosecuting these defendants at all (to the right, and the majority of the public), and the danger of inflaming the campuses (the left), just back in session (and on the verge of the Moratorium), by what the trial would reveal. In other words, what was important for me was, ironically, important to the White House as well, more than I knew.

How to present this in the book? It interrupts my narrative of what I knew and what I did in the light of what I believed. For now, as before, I'll indicate this context in end-notes. Later treatments might put it into the text in inserts, or different type, or footnotes, or end-notes: or a separate, concluding chapter or appendix that presents all this background material discovered later, omitted earlier in the narrative; or leave it out of this book.]



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In the course of drafting this, over the last three days, I've had to confront and clarify my own understanding of why this particular trial and the way it ended and the way the ending was reported had such a catalytic effect on me. Why it kicked me over the edge into massive civil disobedience, "conscientious objection," a decision to take an act (in addition to other forms of "testifying"--in company with the Carnegie Endowment and the Bermuda Group, with high-level Democrats, with fellow experts from RAND, as a witness before the Senate Foreign Relations Committee--all of which looked much less risky and potentially more effective than putting out the Pentagon Papers history) of truth-telling, public "witness," that would almost surely send me to prison for life.

Actually, as I think about it, all these others acts were risky, too, though less so. They were risky enough to keep any of the people I approached from joining in! (except for my colleagues on the RAND letter; and they were the only ones at RAND willing to do it! [WHAT BROUGHT EACH OF THEM TO THAT POINT?]) They nearly chickened out, toward the end. And several of them did almost lose their jobs. We all got the condemnation of our colleagues; and Harry Rowen lost his job in part because of the letter). The Carnegie Endowment would not call the Bermuda group together; the Democrats would not step forward to take the rap; Fulbright never did hold his hearings, for fear of the risks.

It's true that I was willing to take these steps, before I decided to copy the papers. But I was really ready to take the risks of copying the papers even earlier, from the time I heard Randy. I just hadn't thought much about copying them (as far as I can remember) and it definitely wasn't clear that that would have much effect or look highly relevant.

So it may be that one had to be in "altered state of mind," as I was from the WRI Conference on (not significantly changed by the September 30 stories) at the end of August, in order to undertake any of these risks, not just the ultimate risk of the Pentagon Papers. No one else was up to it, except (to their great credit, which I have perhaps not adequately appreciated till this moment) the other five signers of the RAND letter. (Would any of them have, perhaps, gone as far as I did? Not Kellen. Not, I don't think, Langer. Hoeffding I simply don't know. Gurtov? Maybe, if pressed. Horelick? He had the guts; what brought him to the point of signing the letter? He probably wouldn't have thought it would help, enough.)

So it may have taken the same amount of alteration in my state of mind, or nearly that, to get me to push any of these other initiatives, as it took to get me to start copying. What was that alteration? see below\*, p. 7.



What decided me to copy and release the PP, at the particular time I did, not earlier and not later? And why did the stories on September 30 contribute to this?

On the first point:

Copying and releasing the PP looked somewhat more promising before November 3, before Nixon had committed himself (to the old strategy) and before he had convinced the public, falsely, that he had a new strategy.

That was why, between September 30 and November 3, it seemed urgent to try to get the Papers out quickly: to make it easier and more attractive to Nixon to blame the Democrats for a botched and (in the eyes of the public, at least, if not Nixon/s) illegitimate war and to close it out (as Mansfield, it turns out, was urging Nixon to do, along with Laird and others in his Administration).

But that wasn't so obviously promising as to have been compellingly persuasive earlier in September, or later: if I hadn't read the Sell and Donovan stories on September 30 (or if I had read them later, say on November 4!)

In other words, if Nixon hadn't ended the trial, in a way that led to that reporting about the chain of lies, on September 30 or soon after, I might not have added the copying of the Papers to the list of things I was doing.

Other ifs: If I hadn't decided to copy the Papers well before October 15 (i.e., if the thought or impulse had been delayed till, say, October 6:

--there wouldn't have seemed enough time to copy enough of them to contribute to the Moratorium on October 15.

After October 8, if I hadn't already started copying the Papers, I would have been so caught up in responding to the public interest in the RAND letter (and the upcoming testimony before the Senate,) I almost surely wouldn't have started then to copy the Papers if I hadn't already done so.

(What I knew by October 8 and 9, which I hadn't known on September 30, was: the RAND letter did come out, to great public interest; there would be Senate hearings, to which I was invited

My testimony did not at all require the Pentagon Papers to back it up, any more than the RAND letter did. In fact the Papers were only peripherally relevant to my testimony on Nixon's secret policy, if I were to give that. But could I really say much about Nixon's policy? Had I thought at all about presenting the Options Paper and NSSM-1 in testimony? I don't think so. Had I even copied these, early on, or prior to October 15 or November 5? Did



I give these, in the first batch, to Fulbright? I don't think so; but I don't really remember. I certainly did eventually; but it would have made great sense to do it initially. I just don't remember, at this moment.

I surely didn't mean to "burn" Mort Halperin or John Vann or Charlie Cook by telling the committee openly what they had told me. Should not the Committee have called Halperin? He could have testified, having just left the NSC. But would he have done so? What would he have said? What if they had been primed to ask him what he had told me: might he have testified to it? He should have; it would have been a perfect opportunity. I don't think Fulbright/Lowenstein meant to call him. Did they? Had I suggested it?

It would have been a perfect time for McNamara to testify; but he was silenced, at the World Bank. McGeorge Bundy? Who did Fulbright mean to call? (Ask Lowenstein and Moose; Jones; Pat Holt).

Anyway, I wasn't in position, unfortunately, to testify much about Nixon. I couldn't reveal my sources, I didn't have documents, except for NSSM-1 and the Options, and they didn't reveal his strategy, though the answers to NSSM-1 would have been perfect revelations for discrediting Nixon's secret strategy and encouraging a withdrawal! If I didn't mean to expose them at the Hearings, that seems incredible! Indeed, it would have made much more sense to plan to do that, or even just to plan, as of September 30, to copy and disclose these above all, than to reveal the Pentagon Papers! (Maybe I really did give them to Fulbright on November 3, and planned to testify on them, and have forgotten this; though that too would be very surprising, and notable).

Anyway, on what I did plan to testify on, essentially the proposal in the RAND letter, the letter to Bolte, the message for the Democrats, the November 4 memo: the Pentagon Papers were very powerful backup, even if not quite essential. (I.e., my colleagues at RAND drafted the letter without knowing the contents of the PP, though Gurtov, for one, did. How much of the PP had he actually read?

Halperin, my source, did know them. How critical to Halperin's views, his concern, his willingness to reveal Nixon's plans to me, his later participation in the trial, and his policy views on Vietnam, was his reading of the Pentagon Papers? What did he draw from that? How much had they affected him, and how?

(Same questions for Gelb. We were, after all, the only three who had read them all!) (How correct was the Oliphant story: that this study had had a big effect on the only three who had read it?)

Thus, given that I had started to copy on September 30, it



made great sense to plunge ahead after October 9, when I was invited to testify, to meet both the deadlines of the hearings and of the Moratorium (and for the November 15 Moratorium actions, even if not October 15).

But it remains plausible that if I had not begun to copy by October 1, I would probably, almost surely, not have started to copy the Papers, or ever have copied them, after October 8, when the RAND letter appeared. Looking in the other direction, however, I could have begun copying any time after seeing Randy: i.e., basically, any time in September, if some thought or event had triggered it. September 30 was close to the last time I would have, or within a week of it.

A different if: If Nixon had carried out his Duck Hook plans, on November 3, that would have been more than enough to trigger my copying of the Pentagon Papers, to say the least. Just what would that escalation have done to the country?! I've never seen a speculation on it; activists are scarcely aware of the Duck Hook planning, which was going on throughout September and October!

What would it have taken for Nixon to carry these plans out? Well, an absence of the October 15 Moratorium! Or, short of that, a fizzling of the October 15 Moratorium, a lack of Establishment and media support, and support in Congress. (After all, Nixon had neutralized most such support for the November 15 Moratorium: partly by his November 3 speech, but largely by astute red-baiting. If he had done that with equal effectiveness before October 15 and greatly reduced both the attendance and the coverage: he probably would have chosen to go ahead with carrying out his November Ultimatum, and given the speech beginning "Tonight, pursuant to my orders..." (drafted by Lake and Morris!) Then....!!! (Nuclear weapons?!!!!)

I would have copied, and been able to publish, the Pentagon Papers; but that would have been submerged in general societal rioting, no? (Of course, his doing this was probably premised on there being a less-effectively-mobilized antiwar movement than actually existed in the Moratorium. Still, escalation on this scale would have triggered such a movement very quickly.

He was simply wrong to think, in the fall, that he could have gotten away with this; he underestimated the Moratorium, and he underestimated the underlying mood that led to it, even if the Moratorium itself had not taken off or, say, had been scheduled to start in November rather than October: as, I suppose, was perfectly possible, with the activists knowing nothing of Nixon's November 3 plans.

(reference to p. 3 above)

\*What was the special state of mind that led me to take all the initiatives of September, including finally the copying of the PP? And how did the stories on the ending the SF trial contribute to this? (It was the stories, the nature of the commentary, that affected me, much more than the actual ending of the trial, which many were pressing for and which was widely foreseen. Did I have particular expectations or concerns about the trial being ended, before September 30? I can't remember; I would have to be reminded by seeing the earlier reporting and speculation.)

On the Special Forces murder trial:

It's striking how the issues in this trial paralleled--in the small--the issues the war posed for me.

Just War doctrine: Much killing in war is justified; but some killing is not, it is murder, just as if it took place in peacetime. (See the well-chosen title of the book on the Special Forces murder case: A Murder in Wartime (Jeff Stein, NY, 1992))

This applies not only to the killing of civilians, non-combatants, or neutrals. Under some circumstances it applies to the killing of enemy officials:

--Enemy civilian officials or agents, not in custody: a somewhat gray area. The Phoenix program! Colby insisted it was not an assassination program (though it was); but the very fact he had to issue directives and warnings to his subordinates shows that "abuses" were occurring.

Anyway, there is near-universal agreement that some assassination would be legitimate and desirable: Hitler is the favorite example. (Khadafy, Saddam Hussein were recent targets. Trujillo, etc. Much effort to show that JFK did not intend or order the killing of Diem, an ally; cover-up of orders to kill Lumumba, Castro, Trujillo, Allende, Schneider. Che Guevara, killed in custody, with an American in the next room. (Why not more controversy about that?! Wasn't "Max Gomez," Bush's terrorist, involved, in the next room; ends up wearing Che's watch?)

This morning on Meet the Press, 50th anniversary, Schwartzkopf is shown denying that Saddam had been an individual target. (The program, as indicated by its summary clips, appears to be mainly a showcase for official lies).

--enemy military prisoners of war, having put down arms, in custody...

--enemy military personnel, even on the battlefield, being killed "disproportionately" or "without military necessity" (few cases actually judged to be in this category: but public



unease/controversy about:

Killings on the highway from Kuwait, of retreating soldiers and civilians in the Gulf War (this may actually have caused Bush and Powell to end the war)

Huge (deliberately uncounted, or at least not released publicly) killing of Iraqi soldiers in the Gulf War

(Note: in *Exterminate the Brutes*, the author makes the point that vastly disproportionate casualties are characteristic of colonial war, between technically advanced and indigenous peoples. As in the shelling of Haiphong, 1946. These affect both civilians and "enemy troops," where the enemy is underdeveloped, indigenous.)

--an enemy, or suspected enemy (like Thai Khac Chuyen, in the SF murder case) in custody.

A large part of the public, and many military, question or reject the (Just War, Nuremberg) notion that any authorised killing, or just, any killing, in wartime, can be wrong or criminal: at least, enough to warrant punishment, or even criticism.

Thus, they question whether it was wrong to kill babies at My Lai; since they would grow up into little children, who would lay mines and throw grenades, or young women, who would put razorblades in their vaginas, etc. "Everyone in a guerrilla war is a legitimate target, an enemy."

A much larger number, even, would condone any killing done under orders of superior authority. They would reject the "singling out" of anyone for practices widely done or done under the pressures of combat or even, of being in a combat zone-- "unfair, selective prosecution," ignoring the context of practice under battlefield conditions and the pressures of combat, and the leeway due anyone who is exposed to danger for patriotic reasons. And they would reject condemnation or punishment for anyone acting pursuant to orders or command policy. Except the supreme commander? He's not likely to be prosecuted, or condemned, unless for failure.

But in this case, Abrams did bring murder charges (largely motivated by prejudice against the Special Forces and a feeling that they did not acknowledge his command authority over them, and especially by a feeling he had been lied to (though the book does not actually depict the "rage" described in the news stories, even after Rheault had directly lied to him; rather, incredulity, dismay).

Likewise, General Mabry, who had specific strong feelings against killing prisoners. Secretary of the Army Resor. Some of



the men involved, like Captain Williams, did feel they had committed murder, and others had opposed the killing, like Lt. Col. Facey, Sgt. Alvin Smith. The CIA was aware of the legal issues, the potential for major flap: Shackley, Chipman... All Abrams' top staff officers at least go along with his decision, however uneasily.

"The Army cannot condone murder." "We don't want to become like our barbaric enemies, or like the Nazis": we have rules governing killing, we make distinctions, we abide by them, we condemn and punish violations. (The Nazis did, too, actually! See Himmler, 1943: no personal sadism, no personal looting. And, the personal feelings of many individual officers that there were thresholds they wouldn't cross, even though in practice the thresholds kept moving.)

The key thing that divided people on the case was: Is it murder? Is it important?

[Like it or not, one must recognize that the same issue divides the "pro-choice" and "pro-life" camps on abortion. Is killing a foetus murder, or not? If it is, various legal and extra-legal, civil disobedient (non-violent, I would insist) responses are appropriate, or obligatory. If it is not, it can even be a protected right (but not if it is murder).

The issue turns on, Do you see a foetus as a (potential) human person, or not? (Compare: is a "gook", or a gook "enemy", etc. a human? With rights? Even in wartime?) It may seem arbitrary and peculiar to do so, with respect to a one-week or one-month foetus. But it might be equally arbitrary, capricious and self-serving to deny it of, say, an eight-month baby in the womb, as some extreme proponents of "it's just organ tissue, part of the mother, till it's born" would say.

At some point, abortion becomes infanticide, though the point differs for different observers. And at that point, strong feelings and strong measures are not only foreseeable and understandable, they are appropriate. Though that still doesn't answer the questions: who should decide; what to do about the situation; how to treat a maternal-killer or her doctor.]

Can killing a gook be murder? Can killing a suspected enemy gook be murder? Even a civilian? Even in custody? (a distinction many who condoned the killing missed). Can it be important enough, to condemn officers who do it, in "good faith" (believing it serves some legitimate interest: of the nation, their agency, their unit, their boss)?

In my case: I am increasingly coming to see the importance to me in the summer of 1969 of my coming to define US killing in



Vietnam as murder.

This had two stages: 1) my lecture at Ohio and my reflections on it, followed by my talk with Halperin, leading me to the conclusion that to pursue a war (especially, a hopeless, stalemated war) for US interests on the territory of people, potential victims, who mainly prefer it to end, is wrong, unjust, unjustified, murder. Hence, that it must end now, not be prolonged for a more graceful exit or a decent interval or to gain some minor concessions. That ending a sequence of murders cannot be "too precipitate, hasty."

This is what other colleagues or Americans didn't see: that "expending" other humans as "inputs" to serve American governmental ends, whether American or foreign, could be justified only under certain conditions.

If those conditions had ever applied in Vietnam (I thought they had, as late as the summer of 1969, but no longer thought so after September 1969, after I had read the early volumes of the PP), the question was whether they continued to do so in 1969. I thought not.

What then was the moral/legal status of continued killing? (This question didn't arise for many, who recognised no such requirements as the Just War doctrine implied). Further killing, I saw at this point, was murder. It might serve certain ends, legitimate and even important ends in themselves, but under these circumstances, these ends could not justify these means, the taking or risking of human lives.

That was what Chuck Cooper was ignoring, in describing 5000-10,000 US KIA per year as an acceptable "cost" of an "input." Lives, whether American or foreign, are just not morally or legally available to American decision-makers as resources for achieving just any ends, under any and all circumstances. I.e., as I saw it (and many others), though not in the eyes of many others, who essentially accept total war as an instrument of the President for any purposes under any circumstances.

What to do about it? I learn at the WRI Conference the Gandhian answer to the question, what should you do in the face of an ongoing organized evil (is that a Gandhian term? "wrong"? "Harm"? I have a feeling that Gandhi does describe certain things as evil, immoral, but perhaps I'm mistaken). Individual and organised jail-going is one thing. Truth-telling is another: in particular, telling the truth, acting it out convincingly, about your moral judgments, your perception of a morally fraught situation.

Next, I read the early PP and recognize that the war has been unjust, a neo-colonial reconquest, from the start: thus that all



the US and US-supported killing, of civilians and military, on the battlefield and off it, has been illegitimate, unjust, unjustified, murder.

This simply reinforces my conclusion of May: it must stop now, (it should have stopped in 1945, it should never have started), as a matter of high priority and urgency, even at the cost of significant, important interests and objectives, none of which can justify murder as a means, none of which can in these circumstances convert murder into justified killing.

Effective actions to do this can be appropriate (they may or may not be seen as obligatory, or on the other hand as legal) even though they involve great personal sacrifice.

It is noteworthy that I had this last perception even before the WRI Conference (though, after the May insight). It happens that the SF murder defendants went into Long Binh Jail on June 21, 1969, the day of the landing on the moon. But I recall that on that day, while watching this event with Lloyd Shearer (and Shana Alexander?), the thought in mind that day was: These men could end the war.

One or more of them were Vietnam veterans. They knew the war. They had the real-time, rapt attention of a large part of the world's population. One or more of them could say to the world television audience: "We're not coming back till the war is settled."

They had oxygen for three or four days, perhaps a little longer (a week or two? at most). But even three or four days was long enough to get a basic settlement of the war, in 1969, on terms that should have been accepted and settled it in 1968 or early 1969, if not years earlier. It was long enough, in 1969, or 1968 after Tet (not, for example, in 1966-67) to generate a public movement in the US and worldwide, to force the President to bite this bullet and settle, and to force other state leaders, including the Pope, to demand this of the US with maximum pressure.

The time-pressure would have been the oxygen supply of the astronauts, or the one or more making this demand, who had the unique, historically unprecedented advantage of: the world's focussed attention; the world's admiration, adulation; a limited time of survival, not too short (hours) or too long (months, as for a hunger strike); the prospect, if the demands were not met, of a televised death that would drive the world crazy (literally); the electrifying example of their own heroic commitment, to an appropriate end (widely desired among the nations of the world); an absolutely reasonable, feasible, desirable demand, saving many lives, overdue to be fulfilled.

Of course, it was extremely unlikely that an astronaut-type,



military, organization-man, stable to a fault, would imagine such an initiative or act on it. But impossible? They didn't have to imagine it on their own; someone could have suggested it to them. They could have found a role-model for it: just as I (not that different from them in background, maybe even in temperament) was to do within two months, and had already done over the last two years. They were hero-types, risk-takers, not your ordinary organization men by any means. And the fact that they were military and had been in Vietnam didn't at all rule out that they were intensely disillusioned with the war and wanted it to end. (After the PP came out, I myself could have influenced one of them).

Anyway, that's the way I was thinking in June, 1969. There was no doubt in my mind, already, that I would have been willing to do that myself if I had been up there (as my RAND colleague, Walt Cunningham, was up there somewhat later). And neither I nor they would have had to feel suicidal to do it, either; their chance of survival would have been great, I believe, or not much less than the chance they were counting on anyway, up there!

Later, Tony Russo told me that he had had exactly the same idea, and had gone so far as to write out a treatment for a screenplay or television drama based on it. We were well matched. (Might there have been others with the idea? I've never asked. There was no shortage of people who imagined or actually believed that they were watching a hoax, a drama televised in Burbank, like Orson Welles' War of the Worlds, only officially sponsored; the notion persisted for years.

Imagine (a new thought for me) a real hoax to that effect, to get a war ended (Bosnia) or some other objective; a televised, realistically staged "hunger strike"! Or short of that: simply a screenplay, a drama, that depicts either such a hoax or an actual use of a live event of this sort, to this end! Instead of what has been filmed on TV: peace activists (one modelled on me!) actually threatening to set off a nuclear weapon (or terrorists, Russians or Arabs, doing so) if they don't get their way!

This has not happened in real life, though it has been made the subject of films (True Lies, Air Force One, One Point Safe). Whereas there has been no dramatic presentation of what has really happened often, a self-sacrificial non-violent action for peace.

Well, a film about the Pentagon Papers...(though being on trial, or being sacrificed, was not the main purpose or effect of that action, as people often note. Still, it had that dimension).

What do you do to stop mass murder?

A more common question that people have actually been addressing: what do you do to investigate, expose, punish, past



mass murder? Cambodian genocide; past genocide in Rwanda and Burundi; in Bosnia. Indonesia, 1965-66. Latin American dirty wars and death squads. South Africa. The issue of amnesty, Truth Commissions, an International Criminal Court, capture of suspects.

But suppose, as the cases that concern me, past and present, the issue of one of stopping future mass murder? Which may or may not have been preceded by known or secret mass murders under comparable circumstances.

The case that confronted me in the fall of 1969: What do you do if you have documentary evidence of past mass murders--evidence of the circumstances of the decisions and actions that determine the killings to have been murder--in a process that is still going on and is certain to produce further mass murders?

What do you do if public ignorance of the past prevents the public and its representatives from foreseeing the likelihood of future killings or from recognising that they will be, like the past ones, mass murder?

This was exactly the way in which Merrell Williams saw the challenge to himself, as he read tobacco company documents that corresponded exactly to the Pentagon Papers, in terms of what the executives knew and when they knew it, about the deaths they were causing and planned to cause. (see footnote 3 in accompanying file, SFMurders)

Like me, he seemed to have no interest in punishing the executives, or even in simply exposing them; but in stopping what they were continuing to do). Like me, he expected to go to jail, if he did what seemed to him essential to do to prevent some of these future deaths.

On the motives of those who pursued the SF murder prosecution: some were just following the rules, the evidence, the law. Some (Mabry? Abrams?) wanted to preserve the "honor" of the Army, to demonstrate that there were rules, constraints, that must be obeyed, the observance of which reassured the members that they were honorable, decent, respectable, despite the other (authorised) killing they were doing. Some (Abrams) wanted to bat down an elite group that thought they were above all law (and specifically, outside his own authority).

Were there, or not, some who were genuinely worried about future, further killings, which must be deterred or prevented? They might well have been! The case was immediately relevant to Phoenix, which involved many thousands of past murders and was still going on! (That alone was reason enough for Nixon to drop the case!) In fact, many officers were making inquiries about their vulnerability because of involvement in Phoenix.



Both the prosecutors and the lawyers for the defendants were coming into possession of a large amount of data about legally-questionable practices during the ongoing war. The latter lawyers, at least, would have had the incentive to educate the public enormously if the trial had been held, to an extent comparable to the Pentagon Papers! (which were actually scanty on the practice of war crimes; they bore more on the Washington crimes of aggression).

Did even the My Lai trial do this, or have this potential? (There, Calley was actually killing babies, and other civilians, though the older ones were "suspects" in the eyes of the soldiers, like Chuyen! Phoenix, for example, was less relevant as a precedent).

See the Buchwald column, of September 30, listing ironically all the practices that seemed equally or more murderous and were on a much larger scale.

Did anyone perceive the trial as having the positive advantage of public and Congressional education, with this as an incentive for continuing it? Not, I guess, the defendants or their lawyers, who were, after all, facing stiff prison sentences without having chosen to take this risk for public education, protest against the practices, or a desire to end the war.

Ironically, the effect of aborting this chance to educate the public by dropping the trial was to induce me to risk/accept a (longer) prison sentence in order to bring about a comparable education on the war as a whole: not just on its "war crimes" but on the whole war as a crime, aggression, or at any rate a hopeless effort that it was no longer "just" to continue, or never had been worth its costs.

Another similarity between the SF trial and the issues I faced was the question: Who is authorised to order these killings? In their case: mid-level intelligence officers? The Special Forces? (Rheault). The CIA? Were they over SF in command authority or not; did their "advice" count as a directive, or legitimation, or not? Or Abrams: did he control SF or not?

In my case, the war as a whole: Was the President authorised to initiate or continue killings on this scale, or not? Did it (not) take Congressional decision? What if Congress had been deceived? (like Abrams). If Congress had not approved, were the killings then murder? (As, if Abrams, or CIA, or Rheault, had not approved, or ordered...or if they had failed to preempt when they could...)

The ending of the trial prevented a legal airing of the issues on assassination: whether it was ever legitimate, a legal order that could be authorised and obeyed; under what circumstances; who



was authorised to order it; what procedures, etc. The Supreme Court has never addressed such issues! Control has remained entirely within the Executive branch, ruled nominally by Presidential or CIA directives. Overseen, really, by no one. Lied to Congress about, by CIA: as recently as in the Nuccio/Alpirez case!

But it could have been ended without provoking me into starting my own trial of the war, putting the war on trial. If there had been less lying...if the stories hadn't conveyed so clearly the reporters' sense that all the statements were lied, that what they were describing (they may not have sensed or noticed themselves) was not only a system of lies but a system that lied, a chain of command that lied from top to bottom, a lying-machine, that was also (and not by coincidence) a murder-machine...or if I just hadn't happened to read these stories, in that particular week...

My preoccupation in those days was with war, with killing of soldiers on the ground and killing of civilians from the air, with secret policies and threats, the latter more secret and concealed than lied about, it wasn't lying that was mainly on my mind or was the main problem. Yes, the public was being misled about the President's secret intentions just as it had been in 1964, and to the same effect, but Nixon hadn't yet explicitly lied as much as LBJ had in 1964, about Tonkin Gulf and during the campaign.

The Pentagon Papers could expose those latter lies and a lot of others, and focus public attention on the pattern of lying, but as I say that didn't seem to me to be the main problem in September, 1969, and it didn't seem top priority for me to expose past lies or to raise that issue.

It was the stories that morning that raised the issue for me. The spectacle in those stories of men like my former colleagues and myself made me sorry and ashamed that I had followed the rules so long, the same rules of secrets and lying. The stories didn't tip me into resistance, I was already there, but they added a dimension to it that made the Pentagon Papers more relevant.

I decided that in addition to the other things I was doing I would resign from the lying-machine and expose it, shut the door to my future participation in it and do my best to knock it over, shove a stick in it, sabotage it, show disrespect for its rules and contempt for its norms. When the war was over I would not enlist again.